

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

Case No: 5:21-CV-00213-M

CAPITAL READY MIX CONCRETE,  
LLC,

Plaintiff,

v.

ASTEC, INC.,  
CEI ENTERPRISES, INC., and  
REXCON, INC.,

Defendants.

)  
)  
) ORDER ON DEFENDANTS' MOTION TO  
) DISMISS AND COMPEL ARBITRATION  
) UNDER 9 U.S.C. §§ 3, 4; OR,  
) ALTERNATIVELY, TO DISMISS UNDER  
) *FORUM NON CONVENIENS*; OR,  
) ALTERNATIVELY, TRANSFER  
) PURSUANT TO 28 U.S.C. § 1404(a); OR  
) ALTERNATIVELY, TO DISMISS  
) PURSUANT TO FED. R. CIV. P. 12(b)(6)  
)  
)

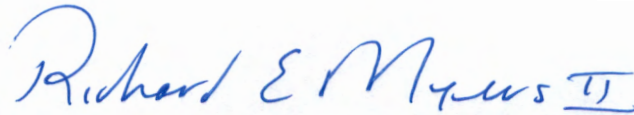
THIS MATTER comes before the court on the Motion of Defendants, Astec, Inc., CEI Enterprises, Inc., and Rexcon, Inc. (collectively, "Defendants"), to Dismiss and Compel Arbitration under 9 U.S.C. §§ 3, 4; or, alternatively, to Dismiss under *Forum Non Conveniens*, or, alternatively, Transfer pursuant to 28 U.S.C. § 1404(a); or, alternatively, to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (the "Motion") [DE 11]. With the consent of Defendants and Plaintiff, Capital Ready Mix Concrete, LLC ("CRMC" or "Plaintiff"), the Motion is granted in part and denied, without prejudice, in part.

THEREFORE, IT IS HEREBY ORDERED as follows:

1. Defendants' Motion to Dismiss this action pending arbitration is DENIED.
2. Defendants' Motion to Compel arbitration is GRANTED. This action is hereby STAYED pending arbitration in Chattanooga, TN, conducted in accordance with the American Arbitration Association's Commercial Arbitration Rules. Within sixty days of the date of this order, and every sixty days thereafter, the parties shall file a joint report informing the court of the status of the arbitration proceedings.

3. Defendants' Motion to Dismiss under *forum non conveniens* is DENIED as moot.
4. Defendants' Motion to Transfer pursuant to 28 U.S.C. § 1404(a) is DENIED as moot.
5. Defendants' Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is DENIED as moot, without prejudice to Defendants' right to file such a Motion or seek comparable relief in arbitration.
6. This Court shall retain jurisdiction for further proceedings. Upon conclusion of the arbitration, the parties shall notify the court by a joint status report informing the court of any necessary further proceedings.

SO ORDERED this 24<sup>th</sup> day of June, 2021.



RICHARD E. MYERS II  
CHIEF UNITED STATES DISTRICT JUDGE

CONSENTED AND AGREED TO:

**FOR PLAINTIFF**

/s/ Todd A. Jones

Todd A. Jones  
North Carolina State Bar No. 25593  
Lindsey E. Powell  
North Carolina State Bar No. 39993  
tjones@andersonandjones.com  
lpowell@andersonandjones.com  
Anderson Jones, PLLC  
421 N. Blount Street  
Raleigh, NC 27601  
Telephone: (919) 277-2541  
Facsimile: (919) 277-2544  
*Attorneys for Plaintiff*

**FOR DEFENDANTS**

/s/ Catherine S. Dorvil

Anthony A. Jackson  
Tennessee State Bar No. 014293  
Catherine S. Dorvil  
Tennessee State Bar No. 034060  
Kelly B. Etchells  
Tennessee State Bar No. 035998  
bjackson@chamblisslaw.com  
cdorvil@chamblisslaw.com  
ketchells@chamblisslaw.com  
Chambliss, Bahner & Stophel, P.C.  
605 Chestnut Street, Suite 1700  
Chattanooga, TN 37405

Telephone: (423) 757-0240  
Facsimile: (423) 508-1240  
*Special Appearance Attorneys for Defendants*

/s/ Matthew T. Houston  
Matthew T. Houston  
North Carolina State Bar No. 46130  
matthew.houston@klgates.com  
K&L Gates LLP  
4350 Lassiter at North Hills Avenue, Suite 300  
Raleigh, NC 27609  
Telephone: (919) 743-7322  
Facsimile: (919) 516-2122  
*Local Civil Rule 83.1(d) Attorneys for  
Defendants*